

To: Birgfeld, Erin[Birgfeld.Erin@epa.gov]; Hengst, Benjamin[Hengst.Benjamin@epa.gov]; Moran, Robin[moran.robin@epa.gov]; Alson, Jeff[alson.jeff@epa.gov]
Cc: Wysor, Tad[wysor.tad@epa.gov]
From: Charmley, William[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FB1828FB00AF42FFB68B9E0A71626D95-CHARMLEY, WILLIAM]
Sent: Wed 12/21/2016 11:22:14 AM (UTC)
Subject: RE: CAFE announcements tomorrow

Erin –

I just sent you a draft revised Desk Statement that incorporates my comments.

Note that we did not address the NHTSA civil penalties action – is that also something that EPA should have a sentence or two on?

Thanks
Bill

From: Birgfeld, Erin
Sent: Tuesday, December 20, 2016 11:49 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Moran, Robin <moran.robin@epa.gov>; Alson, Jeff <alson.jeff@epa.gov>; Charmley, William <charmley.william@epa.gov>
Subject: Fwd: CAFE announcements tomorrow

Hi Robin and team,

Can you help develop a short statement on this NHTSA action coming tomorrow?

Thanks!
Sent from my iPhone
Begin forwarded message:

From: "Conger, Nick" <Conger.Nick@epa.gov>
Date: December 20, 2016 at 6:21:06 PM EST
To: "Birgfeld, Erin" <Birgfeld.Erin@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "Mylan, Christopher" <Mylan.Christopher@epa.gov>, "StClair, Christie" <StClair.Christie@epa.gov>
Subject: FW: CAFE announcements tomorrow

Hi team. See below. Can you send me any language you recommend we say in response to any expected questions?

Sent from my Windows Phone

From: Pettig, Clark (OST)
Sent: 12/20/2016 6:12 PM
To: Conger, Nick
Cc: Thomas, Bryan (NHTSA); Lagana, Susan (OST); Kolachalam, Namrata
Subject: CAFE announcements tomorrow

Hey Nick,

As I'm sure you're aware, NHTSA is going to be rolling out two CAFE-related announcements tomorrow:

- 1) Postponing the civil penalty increase for CAFE violations until 2019, and
- 2) Granting a petition from automakers regarding harmonizing CAFE and EPA's GHG standards.

The current version of the holding statement and Q&A are below. The announcement is currently timed to go out / **embargo lift at 11:30am** tomorrow. We wanted to make sure you had these tonight (tho it is possible there will be a few last minute edits).

Also, I expect you'll probably get some incoming – and if possible, it'd be great to get sense of what you're expecting to say about these, just so we can make sure we're all on the same page.

As always, Bryan and I are happy to chat further.

Thanks!
Clark

Clark Pettig

Press Secretary
U.S. Department of Transportation
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Media Holding Statement

Today, NHTSA is announcing two steps for the light duty vehicle fuel economy program. These steps reflect our ongoing commitment to dialogue with stakeholders throughout implementation of this important program, which saves drivers money at the pump and protects consumers' ability to benefit from innovative fuel saving technologies while buying the vehicles of their choice.

The first action postpones a Congressionally mandated increase in civil penalties for non-compliance with Corporate Average Fuel Economy (CAFE) standards, to reflect the reality that manufacturers design their products far in advance.

In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act, which required agencies to implement inflation adjustments for federal penalties associated with certain violations of laws and regulations. As required by that Act, NHTSA published an interim final rule in July 2016, increasing the civil penalty rate for non-compliance with CAFE standards from \$5.50 to \$14 per tenth-of-a-mile-per-gallon in non-compliance. That initial action would have applied to manufacturers whose fleets did not comply with fuel economy standards beginning with model year 2015. Today's action changes the effective date of the penalty, which will now be effective beginning with model year 2019. This action responds to a petition filed by two automobile manufacturers groups, the Alliance of Automobile Manufacturers and the Association of Global Automakers. NHTSA determined that automakers had largely completed compliance plans and vehicle design decisions for vehicles to be produced through model year 2018 before July 5, 2016, the date NHTSA issued its interim final rule proposing the timing of the increase in penalties. Therefore increasing penalties for non-compliance before model year 2019 vehicles likely would not result in increased compliance or improved fuel economy.

In a second action, NHTSA is granting a separate petition for rulemaking that the Alliance of Automobile Manufacturers and the Association of Global Automakers submitted in June 2016. The petition requests that the Agency look for ways to further harmonize the CAFE program with the Environmental Protection Agency's Light-Duty Vehicle Greenhouse Gas Emissions program. NHTSA plans to evaluate issues raised in the petition in conjunction with analysis leading up to its upcoming rulemaking to set CAFE standards for model years 2022 and beyond, or in a separate rulemaking. NHTSA looks forward to additional input from all stakeholders and plans to begin meetings soon to further discuss the issues raised in the petition.

Q&A (If Asked)

Q: Why is NHTSA delaying the penalties?

A: The Agency determined that it is unfair to apply the increased penalties to model years whose designs, including CAFÉ compliance plans, have already been completed. Most relevant vehicle designs and plans through MY 2018 have been finalized and are now effectively unchangeable.

Increased penalties for vehicles in model years that are unchangeable (2015-2018) will not increase compliance or fuel economy. The primary purpose of CAFÉ non-compliance penalties is to increase compliance. Penalty increases for vehicles that cannot be changed do not serve that purpose.

Q: How much money will automakers avoid paying by delaying these penalties?

A: This number is difficult to estimate in advance (for future model years), because it depends on a number of variables, such as volumes of vehicles sold, and purchases and sales of compliance credits.

Q: Is NHTSA granting the regulatory changes that were requested by the Alliance and Global Automakers?

A: No. NHTSA's decision commits the Agency to conducting a rulemaking to consider the requested changes. This action makes no decision on the specific items requested by the Alliance and Global Automakers.

Q: Is EPA also granting that it will conduct a rulemaking to consider the changes?

A: This action is specific to NHTSA and NHTSA's regulations. It is expected EPA will consider the petition through a separate action.

Q: Will NHTSA and EPA work together and coordinate their actions related to harmonization?

A: NHTSA and EPA remain committed to working together to harmonize the CAFE and GHG program provisions to the extent possible under the agencies' statutes. The Alliance and Global Automaker petition includes requests specific to NHTSA's CAFE program, requests specific to EPA's GHG program and requests for both programs. NHTSA will consider all of the NHTSA and joint items, and will coordinate with EPA as appropriate.

Q: Do these actions impact the EPA Proposed Determination? Did the EPA Proposed Determination impact these actions?

A: The NHTSA actions are independent of the EPA Proposed Determination. The EPA Proposed Determination did not impact these actions and these actions do not impact the EPA Proposed Determination. NHTSA's responses to petitions address matters that are specific to NHTSA's CAFE program.

Q: What did the petitioners request regarding harmonization between the CAFE and GHG programs?

A: On June 20, 2016, the Alliance of Automobile Manufacturers and the Association of Global Automakers submitted a petition to the NHTSA and the Environmental Protection Agency (EPA) requesting that the agencies issue a direct final rule to change CAFE and GHG regulations to "address various inconsistencies between" NHTSA's CAFE program and EPA's GHG emissions program, and to "address additional inefficiencies" in the programs. The issues the Alliance and Global Automakers requested that NHTSA consider include:

- Several adjustments to how CAFE credits are calculated and transferred between passenger car and light truck fleets.
 - Manufacturers earn credits for over-compliance with CAFE standards. Credits may be used to offset shortfalls in other model years and shortfalls in either their passenger car or light truck fleet. Credits may be banked for use in a different model year, transferred between passenger car and truck fleets, or traded to another manufacturer.
- Allowing credits for fuel economy improvements associated with air conditioning and for "off-cycle" technologies that improve fuel economy more in the real world than is reflected in CAFE compliance testing for model years 2010 through 2016.
 - This is a different type of credit than the credit for fleet over-compliance.
- Revise how the minimum domestic passenger car fleet CAFE standard is calculated.
 - The CAFE program has a unique standard for domestically produced passenger cars.

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